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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

NAZARIO MARTIN MEDINA,

Defendant and Appellant.

G056368

(Super. Ct. No. 11CF1761)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, W.
Michael Hayes, Judge. Affirmed.

Rex Adam Williams, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Defendant Nazario Martin Medina appeals from a resentencing order in which the court reduced a miscalculated state prison term by one year. The new sentence reduced the miscalculated term of 14 years to the agreed term of 13 years under defendant's plea agreement. In view of the obvious fact that defendant benefitted from the resentencing order, and that his newly calculated sentence exactly matched the state prison term agreed upon under his plea agreement, it is not surprising that defendant's appointed counsel filed a brief under the procedures prescribed by *People v. Wende* (1979) 25 Cal.3d 436. Counsel did not argue against defendant, but advised the court he was unable to find an issue to argue on defendant's behalf. Defendant was given the opportunity to file written argument on his own behalf, but he has not done so.

We have examined the entire record but have not found an arguable appellate issue. Accordingly, we affirm the new sentence.

FACTS

In November 2012, more than five years before the resentencing order that is the subject of this appeal, and facing an exposure to a sentence of 59 years 8 months, defendant accepted the court's indicated state prison term of 13 years in exchange for his guilty plea to two counts of second degree robbery (Pen. Code, §§ 211, 212.5, subd. (c); counts 1 & 3),¹ two counts of assault with a semi-automatic firearm (§ 245, subd. (b); counts 2 & 4), unlawful possession of a firearm by a felon (§ 12021.5, subd. (a)(1); count 5), possession of a controlled substance with a firearm (Health & Saf. Code, § 11370.1, subd. (a); count 6), unlawful taking of a vehicle (Veh. Code, § 1085.1, subd. (a); count 7), receiving a stolen vehicle (§ 496d, subd. (a); count 8); carrying a loaded unregistered firearm in public (§ 12031, subd. (a)(1); count 9), and participating in a criminal street

¹ All subsequent statutory references are to the Penal Code unless otherwise stated.

gang (§ 186.22, subd. (a); count 10). Defendant also admitted that counts 1 through 9 were committed for the benefit of a criminal street gang (§ 186.22, subd. (b)), he used a firearm in the commission of counts 1 and 3 (§ 12022.53, subds. (b), (e)(1)), and that he had served four prior prison terms for felony convictions (§ 667.5, subd. (b)).

The facts leading to the underlying charged offenses and enhancements are not relevant for purposes of this appeal. The challenged new sentence simply corrects a mathematical error made in sentencing defendant for his admitted offenses and related enhancements. Thus, we limit our recitation of the facts to the history of the court's sentencing decisions.

Originally, i.e., at the time defendant entered his plea, the court sentenced defendant to the agreed upon state prison term of 13 years, structured as follows: On count 2 (§ 245, subd. (b)), the court imposed the low term of three years, plus 10 years for the gang enhancement (§ 186.22, subd. (b)). On the remaining counts, the court struck the gang enhancements for purposes of sentencing, imposed the low term on all of the remaining counts, added 10 years to the robbery counts for the gun enhancements, and ordered all of these sentences to be served concurrently to the sentence on count 2. The court also struck the prison prior enhancements for purposes of sentencing. Punishment was stayed on counts 8 and 9 pursuant to section 654.

Nearly five years later, the Department of Corrections and Rehabilitation (DCR) sent a letter to the court seeking clarification of the sentence. The DCR's letter pointed out that the 10-year-gang enhancement attached to count 2 was incorrect because the count 2 offense, assault with a semiautomatic firearm, is not a violent felony, but instead is a serious felony under section 1192.7, subdivision (c)(31). The DCR suggested that the appropriate enhancement was therefore five years pursuant to section 186.22, subdivision (b)(1)(B).

In response to the DCR letter, the court held a resentencing hearing, and after consultation with counsel, modified the sentence by imposing a six-year midterm

sentence on count 2, adding the five-year gang enhancement, and imposing two one-year consecutive terms for two of the four prison priors, totaling (or so the court and counsel believed) the original agreed upon 13 years. The problem here was that both court and counsel forgot about the unmodified sentences previously imposed. Specifically, the concurrent sentences on the robbery counts with the 10-year-firearm enhancement, totaling 12 years which, together with the two newly imposed prison prior enhancements, now totaled 14 years.

The DCR recognized the problem and sent another letter to the court pointing out that the longest sentence under the new abstract of judgment was now 14 years, and asked the court to clarify.

The court set a hearing for a new resentencing, and defendant was transported to the hearing, at his request. Defense counsel asked the court to reconsider the original sentence and to strike the firearm enhancement on the robbery counts. The court declined the request, stating: “I’m not going to make him serve one more day than he agreed to because I’m doing a resentencing issue. That’s not fair to him. And I’m not going to let him serve one day less than he agreed to because that’s not fair to the People.” The court fixed the problem noted by the DCR by striking one of the two prison priors, resulting in the longest term now being the two-year commitments on the concurrent robbery counts with a 10-year gun enhancement and one prison prior, totaling the originally agreed 13 years.

DISCUSSION

The appeal is taken from the final resentencing order, which correctly structures defendant’s sentence to match the agreed upon prison term of 13 years. There is no error to be found here. The order merely corrected some mathematical missteps,

and actually resulted in a correction in defendant's favor. There simply is no appealable issue to be found.

DISPOSITION

The judgment is affirmed.

IKOLA, J.

WE CONCUR:

FYBEL, ACTING P. J.

GOETHALS, J.